

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,720

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare reducing his ANFC by removing his needs from the family's grant because of a six month sanction for the petitioner's failure to participate in the Reach Up program. The issue is whether the petitioner refused to participate in Reach Up within the meaning of the pertinent regulations.

FINDINGS OF FACT

The petitioner lives with his wife and their four children. The family receives ANFC based on the petitioner's unemployment. As the designated "principal wage earner" in the family the petitioner is required under the ANFC regulations to participate in the Department's Reach Up program. The petitioner's history of cooperating with Reach Up is less than exemplary, and includes three prior "sanctions" for his refusal to participate in the program.

As of June, 1993, however, the petitioner was participating in Reach Up by working in a "community work experience" (CWE) program. Under the direction and supervision of his Reach Up casemanager, the petitioner worked an agreed upon number of hours per week at a community work site; and his performance was evaluated by a supervisor at the site. The Department concedes that the petitioner was doing well at his CWE site as of June, 1993.

In late July, 1993, the petitioner's Reach Up casemanager was informed that the petitioner had not shown up at his CWE site for several weeks. On July 26, 1993, he sent a form "Reach Up conciliation letter" to the petitioner (the petitioner has no phone) setting up a "conciliation meeting" on August 2nd to discuss the petitioner's apparent refusal to comply with the Reach Up program. A few days later, the petitioner's wife called to report that the petitioner was serving a jail sentence and would be unable to attend the scheduled meeting. Based on what the petitioner's wife told him would be the petitioner's release date from jail, the casemanager rescheduled the meeting for August 23rd.

However, the petitioner's casemanager was unexpectedly hospitalized for several weeks beginning August 13th. Although his replacement's notes showed that the petitioner did not appear for the August 23rd meeting, upon his return to work the casemanager sent the petitioner a notice rescheduling the conciliation meeting for October 5, 1993.

The petitioner appeared for the meeting with his casemanager on October 5th, and he agreed to contact the supervisor at his previous CWE site to see if he could resume working there. The casemanager testified that he considered this agreement a "successful resolution" of the conciliation process, considering that the petitioner had done well at that CWE site previously and that going to jail had "excused" the petitioner's interruption of work there in July. The "conciliation period" that was the subject of October 5, 1993, meeting ended on October 28, 1993.

The petitioner followed through on his conciliation agreement and resumed working at the CWE site on or about November 12, 1993. All was well until December 3, 1993, when, as part of his routine checkup of client worksites, the petitioner's casemanager learned from the CWE supervisor that the petitioner had not shown up at the site for over a week. On December 7, 1993, the casemanager sent the petitioner another conciliation letter scheduling a meeting on December 14th.

The petitioner appeared at the meeting as scheduled. When confronted by his casemanager about his unreported absence from the CWE site the petitioner responded that he was "depressed" because the Department (in an unrelated matter) had placed him on vendor payments for ANFC. The casemanager then told the petitioner that he was going to be "sanctioned". Upon hearing this, the petitioner angrily left the meeting and said "I'm through with this program".

Immediately following the meeting the casemanager sent a notice to the petitioner's ANFC caseworker that the petitioner should be "sanctioned" for the following reasons:

Overt refusal to participate in reachup--client states he is "through with this program". Pattern of behavior over last 4 years shows consistent failure to cooperate.

On December 16, 1993, the Department notified the petitioner's wife that her ANFC would be reduced by removing the petitioner's needs from the family's grant due to the petitioner's Reach Up sanction of six months.

At the hearing in this matter (held on April 27, 1994) the petitioner testified that he became "depressed" in November, 1993, for other reasons in addition to what he had told his casemanager, and that he had also become discouraged at the CWE site because of what he perceived as a change in his supervisor's "attitude" toward him. The petitioner admits, however, that he never attempted to communicate these concerns to his casemanager. The petitioner also stated that he feels there is a personality conflict between him and his casemanager.

Although the petitioner's excuses at the time were unsatisfactory (and despite the fact that they continue to ring hollow), it must be found, nonetheless, that at their "conciliation meeting" on December 14th the casemanager told the petitioner that he was going to be "sanctioned" before any actual "conciliation" was offered or even discussed; and that the petitioner did not leave the meeting and say he was "through" with the program until after his casemanager told him he was going to be "sanctioned".

ORDER

The Department's decision is reversed.

REASONS

The ANFC regulations specify that whenever the Department determines that an individual is not cooperating with Reach Up, "the conciliation process beings". W.A.M § 2349.3 The "conciliation process" under Reach Up is described in the following regulations:

Although the rejection by the petitioner's casemanager of the petitioner's excuses for not showing up at the CWE site was not unreasonable, the above regulations require as part of every conciliation process that the participant be afforded the chance to "resume participation in the activity which was the source of the determination of failure to comply...or to...begin participation in another program activity". Id. § 2349.5. If, as here, such a chance is not offered, and if the decision to sanction a participant is made at the outset of a "conciliation meeting"--before the meeting proceeds to "explore ways in which the participant may satisfy Reach Up requirements"--it cannot be concluded that the "conciliation process" has been followed. Id. § 2349.4.

The problem with the Department's action in this case is that the petitioner's entire four year history with Reach Up was prematurely brought to bear on its decision that the petitioner had exhibited a "pattern of behavior" showing a "consistent failure to cooperate". The above regulations require, however, that such a determination can only be made after an attempt at conciliation of the most recent dispute over non-compliance proves unsuccessful. A "pattern of behavior" of noncompliance cannot, under the above regulations, be used to justify the Department's failure to offer "conciliation" as described in the above regulations. Nor can a statement of noncooperation uttered by the participant after he has been informed he will be "sanctioned" be used to justify the imposition of that sanction in the first place.

The petitioner in this case may well have an "attitude problem" toward Reach Up that makes him a frustrating and difficult client to work with, and which may well make his ongoing prospects for successful participation in the program problematic. It can also be argued that the conciliation process can become a "revolving door" for some participants. The overall purpose of the program, however, is not punitive. See W.A.M. § 2340.1. In sanctioning those mandatory participants who do refuse to participate--an act that has severe consequences for that individual's entire family--the Department must comply with the strict letter of the regulations. In this case it did not do so. Therefore, its decision is reversed.

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